

## **CHAPTER 61-28.1**

### **SAFE DRINKING WATER ACT**

**61-28.1-01. Declaration of public policy and legislative intent.** The legislative assembly declares it to be the policy of this state that safe supplies of drinking water are essential to the maintenance of public health and welfare. Those persons supplied with water from public water systems must be able to rely with confidence upon the quality of water publicly used for human consumption. Those persons served by public water systems are entitled to regulation of those systems so that they may purchase healthful water, free of harmful contaminants. It is the intention of the legislative assembly that these policies will be fulfilled by the state in accordance with the terms of this chapter and consistent with the provisions of the federal Safe Drinking Water Act of 1974.

**61-28.1-02. Definitions.** As used herein, unless the context or subject matter otherwise requires:

1. "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.
2. "Department" means the state department of health.
3. "Maximum contaminant level" means the maximum permissible level of contaminant in water which is delivered to any user of a public water system.
4. "Person" means any individual, corporation, limited liability company, company, association, partnership, or municipality.
5. "Public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals, and includes:
  - a. Any collection, treatment, storage, or distribution facilities under control of the operator of such system and used primarily in connection with such system.
  - b. Any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.
6. "Supplier of water" means any person who owns or operates a public water system.

**61-28.1-03. Powers and duties of department.** The department may exercise the following powers and shall have the following duties:

1. Administer and enforce a safe drinking water program pursuant to the provisions of this chapter.
2. Provide technical assistance on request to public water systems of the state and other persons, and cooperate with appropriate federal agencies.
3. Advise, consult, and cooperate with other public agencies and with affected groups and industries.
4. Issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial process.
5. Maintain an inventory of public water systems within the state, which inventory may consist of such information as the department deems necessary.
6. Conduct sanitary surveys of public water systems within the state.

7. Adopt rules and regulations relating to maximum contaminant levels, monitoring and analytical requirements and reporting, public notification, and recordkeeping which the department determines are necessary to protect public health and welfare.
8. Adopt rules and regulations relating to the siting, construction, operation, and modification of public water systems which the department determines are necessary to prevent violation of maximum contaminant levels.
9. Require the submission of plans, specifications, and such other information as it deems necessary.
10. Establish a plan for the provision of safe drinking water under emergency circumstances.
11. Require each supplier of water to keep such records and make such reports to the department as it may deem necessary.
12. Establish a schedule of fees that may be charged by the department for laboratory tests conducted at the request of any supplier of water. Such fees shall be deposited in the general fund.
13. Require any supplier of water to notify the users of such public water system of any violations of any provision of this chapter, any regulation, the terms or conditions of any approval, any variance or exemption, or any order issued by the department.
14. Request and accept grants of funds or services from any federal or state agency, or any other source, public or private, and to administer such grants in accordance with any terms or conditions thereof. Any such grants received shall be used only for the purposes for which they are made.
15. Designate the state department of health as the state safe drinking water agency for all purposes of the federal Safe Drinking Water Act and is authorized to take all actions necessary and appropriate to secure for the state the benefit of such Act and any grants made thereunder.
16. Ensure that all new public water systems, excluding those that principally provide service to transients, commencing operation after October 1, 1999, demonstrate technical, managerial, and financial capacity to comply with all rules adopted under this chapter which are in effect, or will be in effect, on the date of commencement of operations.
17. Develop and implement a strategy to assist all public water systems in acquiring and maintaining technical, managerial, and financial capability to comply with all rules adopted under this chapter.

**61-28.1-04. Approval of water systems.**

1. No person shall construct, install, modify, use, or operate a public water system without prior approval from the department or in violation of the terms of, conditions imposed upon, or order of the department concerning such approval.
2. The department shall provide for the issuance, suspension, revocation, modification, and renewal of any approval required pursuant to this section.
3. Approval by the department shall not relieve any person of the responsibility to comply with any requirements of law or any rule or regulation.
4. The department may provide for the collection of reasonable fees for the approval required pursuant to this section. Such fees shall be deposited in the department

operating fund in the state treasury and shall be spent subject to appropriation by the legislative assembly.

**61-28.1-05. Variances and exemptions.** The department may issue variances or exemptions and make rules and regulations governing the issuance, denial, modification, revocation, and suspension of the same to noncomplying water systems. Such variances and exemptions shall be accompanied by a compliance time schedule requiring compliance within such time as the department shall determine.

**61-28.1-06. Right of onsite inspection.**

1. Any duly authorized officer, employee, or agent of the department may enter and inspect any property, premise, or place on or at which a public water system is located or is being constructed, installed, or established at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and rules and regulations adopted pursuant thereto. If requested by the owner or operator of the premises, a report setting forth all facts found which relate to compliance status shall be forwarded to that owner or operator.
2. The department may at any reasonable time conduct tests and take samples of water and other materials which affect or may affect maximum contaminant levels at any public water system and shall have the power to have access to and copy any records required by department rules or regulations to be maintained and to inspect any monitoring equipment located on the premises.

**61-28.1-07. Certification of laboratories.** No laboratory analysis of water taken from a public water system or any report of such analysis required by this chapter or any rule adopted pursuant to this chapter shall be accepted by the department unless such analysis or report shall be made by the department or by any other laboratory certified by the department for such purposes. The department shall provide for the certification of any laboratory, for the purposes of this section, which meets such criteria as the department may establish to ensure the accuracy of laboratory analyses.

**61-28.1-08. Administrative procedure and judicial review.** Any proceeding under this chapter for:

1. The issuance or modification of rules and regulations including emergency orders; or
2. The determination of compliance with rules and regulations of the department,

shall be conducted in accordance with the provisions of chapter 28-32, and appeals may be taken as therein provided. Where an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue an order reciting the existence of such emergency. Notwithstanding any provision of this chapter, such order shall be effective immediately, but on application to the department within ten days of such order any person to whom such order is directed shall be afforded a hearing. Such hearing shall be in accordance with chapter 28-32. On the basis of such hearing, the emergency order shall be continued, modified, or revoked, within thirty days after such hearing.

**61-28.1-09. Injunction proceedings.** The violation of any provision of this chapter, or any rule, regulation, or order issued thereunder, is declared a nuisance inimical to the public health, welfare, and safety. Whenever in the judgment of the department any person has engaged in or is about to engage in any acts or practices which constitute a violation of this chapter, or any rule, regulation, or order issued hereunder, the department may maintain an action in the name of the state enjoining such action or practices or for an order directing compliance and, upon a showing by the department that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

#### **61-28.1-10. Enforcement - Penalties - Injunction.**

1. If, after the completion of the administrative hearing process, the department determines that a violation of this chapter, or any rule, regulation, or order of the department issued under this chapter has occurred, it shall make all of its evidence and findings available to the attorney general for use in any remedial action the attorney general's office determines to be appropriate, including an action for injunctive relief.
2. Any person who willfully violates this chapter or any regulation or order of the department shall be punished by a civil penalty of not more than ten thousand dollars per day of violation or an administrative penalty as follows:
  - a. One thousand dollars per day per violation in the case of a system serving a population of more than ten thousand.
  - b. An amount adequate to ensure compliance in the case of any system not under subdivision a.
3. Any person who violates this chapter, or any rule implementing this chapter, and any person who violates any order issued by the department under this chapter is subject to a civil penalty not to exceed five thousand dollars per day of violation or an administrative penalty as follows:
  - a. One thousand dollars per day per violation in the case of a system serving a population of more than ten thousand.
  - b. An amount adequate to ensure compliance in the case of any system not under subdivision a.

Nothing in this section shall be construed to deny use of the remedy of injunctive relief where it is deemed appropriate.

**61-28.1-11. Drinking water treatment revolving loan fund - Purposes - Establishment.** To coordinate funding for public water systems in North Dakota, there is established a drinking water treatment revolving loan fund to be administered by the department. The loan fund is also authorized under section 1452(a) of the federal Safe Drinking Water Act, as amended. Grants from the federal government or its agencies, including the United States environmental protection agency, allotted to the state for the capitalization of the drinking water treatment revolving loan fund, and required state matching funds must be deposited in the drinking water treatment revolving loan fund in compliance with the terms of the grants. The principal of the grants must be available in perpetuity for providing financial assistance as allowed under the Safe Drinking Water Act. To the extent amounts in the revolving loan fund are not required for current obligations or expenditures, these amounts must be invested in interest-bearing obligations.

**61-28.1-12. Department - Powers and duties - Administration.** The department has the following powers and duties and shall administer the drinking water treatment revolving loan fund as follows:

1. To apply for and accept grants of money from the United States environmental protection agency or other federal agencies which must be deposited in the drinking water treatment revolving loan fund to be used for purposes authorized under the Safe Drinking Water Act, including the following:
  - a. To provide loans or loan guaranties, or other financial assistance, to community water systems and nonprofit noncommunity water systems eligible for assistance from the revolving loan fund.

- b. As a source of revenue and security for the payment of principal and interest on bonds issued by the state through the public finance authority if the bond proceeds are deposited in the revolving loan fund.
  - c. To buy or refinance debt obligations issued after July 1, 1993, to finance a project eligible for assistance from the revolving loan fund.
  - d. To guarantee or purchase insurance for debt obligations issued to finance a project eligible for assistance from the revolving loan fund.
  - e. To provide other financial and technical assistance and to make any other expenditure authorized under the Safe Drinking Water Act.
  - f. To earn interest before the disbursement of financial or technical assistance.
  - g. To pay administrative expenses associated with the revolving loan fund as authorized under the Safe Drinking Water Act.
2. To administer the drinking water treatment revolving loan fund as established. The department may enter into contracts and other agreements in connection with the operation of the drinking water treatment revolving loan fund to the extent necessary or convenient for the implementation of the drinking water treatment revolving loan fund. The department may combine the financial administration of the drinking water treatment revolving loan fund and the financial administration of the water pollution control revolving loan fund established under chapter 61-28.2. The department may cross-collateralize the drinking water treatment revolving loan fund and the water pollution control revolving loan fund as authorized by the administrator of the federal environmental protection agency under the Safe Drinking Water Act.
  3. To administer and disburse funds with the approval of the state water commission and in accordance with section 1452(a) of the federal Safe Drinking Water Act [42 U.S.C. 300j], as amended.
  4. To establish assistance priorities and to expend grant funds pursuant to the priority list for the drinking water treatment revolving loan fund, after consulting with and obtaining the approval of the state water commission.
  5. To adopt rules necessary for administering the drinking water treatment revolving loan fund.

The governor may transfer grant funds from the drinking water treatment revolving loan fund to the water pollution control revolving loan fund established by chapter 61-28.2 and from the water pollution control revolving loan fund to the drinking water treatment revolving loan fund, as authorized by the Safe Drinking Water Act.